

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

DATATERN, INC.

Plaintiff,

v.

STAPLES, INC., et al.

Defendants.

Civil No. 2:10-CV-00133-(TJW)

JURY TRIAL DEMANDED

**AGREED MOTION FOR DISMISSAL WITH PREJUDICE OF
BANK OF NEW YORK MELLON CORPORATION,
EAGLE INVESTMENT SYSTEMS, LLC, AND PERSHING, LLC**

Plaintiff DataTern, Inc. (“Plaintiff”), and Defendants, Bank of New York Mellon Corporation, Eagle Investment Systems LLC, and Pershing LLC (“BNY Defendants”), file this Agreed Motion for Dismissal with Prejudice of Bank of New York Mellon Corporation, Eagle Investment Systems, LLC, and Pershing, LLC pursuant to Fed. R. Civ. P. 41(a)(2) and (c).

Plaintiff and the BNY Defendants hereby move for an Order dismissing all claims asserted by Plaintiff against the BNY Defendants in this action WITH PREJUDICE and dismissing all counterclaims asserted by the BNY Defendants against Plaintiff as moot, subject to the terms of that certain agreement between the parties entitled “SETTLEMENT AGREEMENT” executed on December 29, 2010, with each party to bear its own costs, expenses and attorneys’ fees.

Dated: January 5, 2011

Respectfully submitted,

DATATERN, INC.

By: /s/ Timothy J. Haller (with permission)

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BANK OF NEW YORK MELLON CORP.,
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LLC*

CERTIFICATE OF SERVICE

I hereby certify that the counsel of record who are deemed to have consented to electronic service are being served this January 5, 2011, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ David. P. Henry
David P. Henry